

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB260

Hearing Date: Thursday February 19, 2009
Committee On: Judiciary
Introducer: Rogert
One Liner: Adopt the Nebraska Claims for Wrongful Conviction and Imprisonment Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Ashford, Christensen, Coash, Council, Lathrop, Lautenbaugh, McGill, Rogert

Nay:

Absent:

Present Not Voting:

Proponents:

Sen. Kent Rogert
Rebecca Murray
Joseph White
Robert Bartle
Amber Weinacht
Richard Wiener, PhD
Ada JoAnn Taylor
Rachel Leigh Morgan
Rebecca Brown
Gary Grayson
Mary Winslow
Tina Kaminski

Representing:

Introducer
NE Innocence Project/Creighton Univ.
NE Innocence Project (exoneree)
attorney
self
NE Innocence Project
NE Innocence Project
NE Innocence Project
NE Innocence Project
Eastern Nebraska Community (ENCAP)
self
Thomas Winslow

Opponents:

Shawn Renner
Steven Olsen
Shane Wilson

Representing:

Media of Nebraska, Inc.
self
self

Neutral:

Janice Walker

Representing:

NE Supreme Court

Summary of purpose and/or changes:

LB 260 is a bill that would provide individuals who have been wrongfully convicted and have spent time incarcerated on that wrongful conviction, the ability to file a claim for services upon release and when an individual can prove actual innocence be able to receive monetary compensation. The following is a section by section description of LB 260:

Section 1. Provides that sections 1 to 12 of the act be cited as the Nebraska Claims for Wrongful Conviction and Imprisonment Act.

Section 2. Provides the legislative intent to provide services and monetary compensation to individuals wrongfully convicted.

Section 3. Provides the grounds for presenting an actionable claim for wrongful conviction and imprisonment, which requires the claimant to verify by documentary evidence the following:

- That claimant has been convicted of one or more crimes and was sentenced to a term of imprisonment and had served all or part of the sentence;

- Provide information on grounds not inconsistent with innocence:

1. Claimant was pardoned for the crime or crimes which individual was sentenced for and is the basis for the complaint;
2. The statute or application which the information or indictment was based on violated the US Constitution or the Constitution of Nebraska;
3. The judgment of conviction was vacated; or
4. The judgment of conviction was reversed

- Provide information demonstrating that there was a vacatur or reversal of either the information or the indictment was dismissed or the individual was found not guilty after a new trial; and

- The claimants claim is not barred by the statute of limitations found in section 9 of this act.

1. provides that if the court finds after reading the claim that the claimant has not alleged sufficient facts to succeed at trial, the claim shall be dismissed, either on the courts own motion or on the state's motion.

Section 4. Provides that all claims under this act shall be presented to and heard by the district court in the county where the claimant was convicted.

Section 5. Requires that in order to receive a judgment the claimant must prove by a preponderance of the evidence:

1. The elements required under section 3 of this act;
2. That they did not commit any of the crimes charged in the information or indictment or the acts charged did not constitute a crime; and
3. That they did not commit or suborn perjury or fabricate evidence to cause or bring about their conviction. Neither a confession or admission later found to be false, nor a guilty plea to a crime the claimant did not commit constitutes bringing about the claimants own conviction.

Section 6. If the court finds for the claimant, the court shall award:

- Damages for the physical injury of wrongful conviction and incarceration of \$50,000 for each year of incarceration and an additional \$50,000 for each year served on death row, both amounts shall be adjusted for inflation.

- The court shall also consider the following economic damages:

1. Lost Wages;
2. Costs associated with criminal defense and efforts to prove innocence;
3. Medical and dental expenses incurred or expected to be incurred after release;
4. Personal physical injuries and non-physical injuries incurred or related to being incarcerated.

- Provide up to five years of healthcare through the state employees group health insurance program.

- Reimbursement for any tuition and fees paid for education of the claimant at any community or state college, state university or mutually agreed upon vocational program.

- Compensation for child support and any interest on arrearages that accrued during period of incarceration.

- Reasonable attorney's fees for bringing claim under this act.

Section 7. This section provides that an award provided under section 6 of this act shall not be subject to the following:

- Any limit applicable to private parties in civil lawsuits;
- Any state taxes, except the portion of the award provided to pay attorney's fees to the attorney of record who filed the claim on behalf of the claimant under this act;
- Treatment as gross wages under State law.

This section provides that the acceptance of any award, compromise, or settlement by the claimant shall be:

- Reduced to writing;
- Except when procured by fraud, be final and conclusive on the claimant.

Section 7 also provides that the damage award shall not be offset by any expenses incurred by the state or a political subdivision including, but not limited to the following:

1. Expenses to secure claimants custody;
2. Expenses required to feed, clothe, or provide medical services to the claimant.

Finally, this section provides that if any property of the claimant was subjected to a lien pursuant to defense services rendered by the state to defend the client in connection with the criminal case that resulted in the wrongful conviction, the court shall extinguish the lien.

Section 8. Provides that a court finding an actionable claim under section three of this act shall provide a copy of the Nebraska Claims for Wrongful Conviction and Imprisonment Act to the claimant, who shall acknowledge receipt of a copy of the act in writing on a form established by the Supreme Court.

The Board of Pardons shall also issue a copy of this act to an individual who is issued a full pardon beginning on or after the effective date of this act and the individual pardoned shall acknowledge receipt of a copy of this act in writing on a form created by the Board of Pardons.

Any claimant granted judicial relief or a full pardon on or after the effective date of this act shows that they did not receive a copy of the act as required under this section, shall receive a one-year extension on the three-year statute of limitations provided in Section 9 of this act.

This section also requires the State Court administrator to make reasonable efforts to notify people pardoned or granted judicial relief prior to the effective date of this act of their rights under this act.

Section 9. Provides that an action for compensation brought under this act shall commence within two years after either a pardon is granted or judicial relief is provided and any other conditions described in section three of this act are satisfied.

- Actions by the state challenging or appealing the grant of such judicial relief shall toll the two-year period.

Persons who were convicted, incarcerated, and released from custody prior to the effective date of this act shall commence an action under this act within three-years after the effective date of this act.

Section 10. Provides that either party to an action under this act is entitled to the rights of appeal provided to parties in a civil action.

Section 11. Provides that a person convicted and imprisoned for one or more crimes who is pardoned on grounds not inconsistent with innocence or whose sentence is reversed and vacated on the basis of newly discovered evidence shall receive up to two years of immediate services needed upon release (after a review of need is determined by Neb. Health and Human Services), such services shall include but not be limited to the following:

- Housing;
- Secondary or postsecondary education;
- Transportation;
- Monetary assistance; and
- Physical, mental, and dental healthcare

Section 12. Provides the following provisions:

- That a person that obtains post conviction exoneration for actual innocence through either a pardon based on innocence or a judicial order vacating or reversing an erroneous felony conviction can request the convicting court to seal or expunge all records, data, and forensic samples pertaining to the erroneous conviction.
 - If the county attorney files an objection to petitioners request for the sealing or expunging of records, the court shall hold a hearing on the issue and will determine if sealing or expunction is the proper remedy.
 - If court orders records sealed or expunged, law enforcement may only access the information with a court order upon good cause for access being shown and that records and data is required for the performance of official law enforcement duties.
 - If court determines that sealing or expunction is warranted, the court shall notify the Nebraska State Patrol and any other law enforcement agency to seal or expunge all records, data, and forensic samples, including all DNA records and profiles relating to the petitioners erroneous felony conviction and destroy all DNA samples from the petitioner in its possession.
 - The Nebraska State Patrol or any other law enforcement agency involved and the court shall provide written notice of the sealing or expunction by certified mail to petitioner.
 - A person who obtains a court order to seal or expunge the records, data, or forensic samples pertaining to the erroneous felony conviction may lawfully answer and swear under oath that an arrest, prosecution, or conviction pertaining to the erroneous conviction never occurred.
 - Any party may appeal a final order granting or denying the sealing or expunction of records.
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Explanation of amendments:

Amendment 456 makes the following changes to LB 260:

1. There are no changes to sections 1, 2 and 10.
2. In section 3 the amendment clarifies that the Act applies exclusively to felony offenses and is only applicable in situations where a pardon or exoneration is based upon actual innocence.
3. Also in section 3, subsection (2) of LB 260 has been deleted due to the amendment's implementation of the State Tort Claims Act. Such subsection is no longer relevant to the proceedings.
4. Finally, in section 3, a provision is added which requires a claimant to prove, as part of his claim, that he or she was not concurrently imprisoned for any valid felony conviction during the time of the alleged wrongful imprisonment.
5. Section 4 is amended to provide that the procedure for filing a claim under the Nebraska Claims for Wrongful Conviction and Imprisonment Act will be the procedure provided under the State Tort Claims Act.
6. Section 5 is amended to bring the Nebraska Claims for Wrongful Conviction and Imprisonment Act into compliance with the State Tort Claims Act. The amendment further clarifies the elements, including the "clean hands" provision; the claimant would need to prove to be successful.
7. Section 5 is also amended to provide that a claimant must prove his or her claim by "clear and convincing evidence" instead of by a "preponderance of the evidence".
8. Finally, section 5 is amended to provide that the amount for the physical injury of wrongful conviction and incarceration shall be not less than \$25,000 per year, plus an additional \$25,000 if on death row instead of \$50,000 per year and an additional \$50,000 as originally provided.
9. Section 6 is amended to make the award determination discretionary rather than mandatory and removes the inflation provision relating to attorney fees.
10. Section 7 is amended to delete subsections (1) (a), (2), (2) (a), (2) (b) and (3) as such provisions are not necessary when the State Tort Claims Act is applied.

11. Section 8 is amended to remove provisions relating to notice requirements placed upon the Courts and the State Court Administrator.

12. The amendment to section 9 clarifies the statute of limitation and harmonizes the Act with the State Tort Claims Act.

13. Section 11 is amended to clarify that the Act applies to situations involving the wrongful conviction of a person or persons who are actually innocent.

14. In section 12 the amendment removes the provision regarding the sealing of evidentiary items.

Brad Ashford, Chairperson